

H. R. 2894

HOUSE OF REPRESENTATIVES
Committee on Armed Services
Subcommittee No. 4
Tuesday, May 8, 1951.

The subcommittee met at 10 o'clock, a.m., the Hon.
Lansdale G. Sasscer, Chairman of Subcommittee No. 4, Presiding.

Mr. Sasscer. Gentlemen of the committee will come to
order.

The first bill on the agenda is H.R. 2894. It is an
exact duplicate of Senate 927 which has already passed the
Senate. We will take up the Senate bill, which, I understand,
is the same subject matter.

(The bill is as follows:)

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Date 12-5-81 By 006199

Mr. Sasscer. I am informed the purpose of this bill is to amend section 6 of the Central Intelligence Agency Act of 1949, so as to permit the Agency to employ not more than fifteen retired or commissioned or warrant officers, whose employment is otherwise prohibited unless certain qualifications are met. The Act of July 31, 1894, prohibits any retired officer from holding a civilian position or office with the Federal Government where the rate of his retired pay amounts to \$2500 per year, unless the officer is elected thereto or is appointed by the President and confirmed by the Senate, or unless the officer is retired for disability.

By itself, this statute prohibits the employment of many officers in Federal agencies unless they are retired for disability.

In addition, under the Act of June 30, 1932, as amended, if a retired officer is qualified for and has accepted appointment to a civilian office or position under the Federal Government, the combined rate of his compensation in such civilian office or position, and his retired pay for or on account of commissioned service is limited by law to \$3,000 per year. This limitation does not apply to officers retired for disability incurred in combat or resulting from an explosion of an instrumentality of war.

In other words, under the 1932 Act the combined retired pay and pay of the officer's position may not exceed \$3,000.

However, the officer may waive his retired pay, and accept the full pay of the position.

The proposed legislation would permit the Central Intelligence Agency to employ 15 retired officers or warrant officers without regard to the 1894 statute which prohibits the officer from holding the two federal offices. The proposed legislation would also remove any question that an officer not otherwise excepted under the provisions of the 1932 Act may receive his retired pay based upon his disability, which is tax-free, and the remainder of the salary of his position. In other words, an officer retired for disability employed by the Central Intelligence Agency would be entitled to his full salary at the Agency but that portion of his salary which would be payable to him on the basis of his disability by the service concerned, would continue to be paid to him and the remainder of the salary would be paid by the Agency.

The Director of the Central Intelligence Agency indicates that they have a very urgent need for 15 experienced officers who, by long experience, have gained the highly technical experience and knowledge necessary in certain particular fields within the Central Intelligence Agency, and strongly urges the enactment of the proposed bill.

The Senate has already passed S.927, which is comparable, with a minor variation, to H.R. 2894, and will be considered by the Sub committee in lieu of the House bill.

Who is the first witness, Mr. Blandford:

Mr. Blandford. Mr. Wolf, who is the Deputy Director of the Central Intelligence Agency, accompanied by Mr. Pforzheimer.

Mr. Sasscer. Do you have a prepared statement, sir:

Mr. Wolf. I have, yes, sir.

Mr. Sasscer. Will you proceed.

Mr. Wolf. Mr. Chairman, and members of the committee, we are very grateful for the opportunity to appear this morning to discuss proposed legislation which will give the Central Intelligence Agency the authority to employ in civilian capacity a very limited number of retired officers of the regular military establishment.

As you know, the appointment of certain types of retired officers to civilian offices is prohibited under the so-called Dual Compensation laws. Because of the technicalities of these laws, I would like to outline the legal situation very briefly. Under present statutory authority relating to the employment of retired officers and their compensation, there are three categories.

The first consists of officers who are retired for disability incurred in combat or resulting from an explosion of an instrumentality of war in line of duty. Officers retired for these causes may be employed by the Government, and when so employed they are entitled to receive the compensation of the Government position which they hold, plus their retired

pay. Thus, there is no restriction on the employment of a regular officer of the Armed Services who has been retired for wounds received in combat, and at last count we had nine retired officers of this type on our rolls at CIA.

The second category of retired officers are those retired for injuries or incapacity incurred in line of duty. Under present laws and decisions of the Comptroller General, these officers may also be employed and compensated by the Government after their retirement, but they may only receive the compensation of their Government position or their retired pay, whichever they may elect. Here again, we have no problem and CIA has twelve such officers on duty at the present time.

The third category comprises those officers who were not retired for wounds received in combat or for incapacity incurred in line of duty, but who have been retired for longevity, and these officers under the present law may not be appointed to or hold another office to which compensation is attached unless specially authorized by law. Their services may be utilized for intermittent consultation but CIA wishes to appoint and compensate them as full time employees.

We are asking in the legislation before this Committee for authority to employ up to fifteen retired officers who fall into the prohibited category. We have delayed requesting this authority pending enactment of general legislation of this nature which has been before the Congress.

Mr. Sasscer. May I interrupt you right there.

Where is that legislation?

Mr. Wolf. Right now?

Mr. Sasscer. Yes, sir.

Mr. Wolf. S. 352 in the Senate -- Civil Service and Post Office Committee?

Mr. Blandford. Yes, sir.

Mr. Sasscer: Thanks.

Mr. Wolf. S. 1507, which passed the Senate on 21 June 1949, was a bill which, among other things, would authorize Government-wide employment of retired officers, and during their period of employment they would be entitled to receive the compensation of their Government position or their retired pay, whichever they might elect. S. 1507 was also passed by the House in the closing days of the 81st Congress; however, when the legislation went to conference it became embroiled in some minor technicalities not involving the particular section in which we are interested.

It never came out of conference and died with the session of the Congress. I understand that it has now been reintroduced into the Senate, but it appears that it will be a long time before it will be enacted. Because of certain specific problems that have arisen in CIA, we have requested permission to introduce our own special legislation on this point. Our bill, S. 927, passed the Senate on 11 April, and it is now before you

I wish to make quite clear precisely what we intend to do under this authority if it is granted. Experience comes only with the years, and our Agency has a grave need for men of considerable and mature experience and judgment. We can find this among the men who have served this country in high military positions and who have served this country in high military positions and who have completed their service and retired. While physically they may not meet military standards for the command of a division or corps, or to fly an airplane, or go through the rigors of a naval campaign, we are more interested in their heads than in their legs, and in their background of military affairs. The accumulated knowledge in certain fields is invaluable to us.

This is the type of officer we hope to employ, and their average salaries will be in the range of ten to twelve thousand dollars a year. They will be considerably less than the pay which they receive on active duty. We have found the Armed Services extremely reluctant to recall these senior officers to active duty, and have had no success in this connection. We think their point of view is understandable in view of statutory restrictions on the number of general officers and have concurred in it.

I wish to point out one feature of the present legislation which has not been included in previous dual compensation statutes. Those officers who have been retired for line of

duty incapacities, under present interpretations can receive either their retired pay or the compensation of their Government position.

Under our proposal they may receive their retired pay plus the difference between such retired pay and the salary of their Government position.

Under the provisions of the Career Compensation Act of 1949, there are certain tax features which make the pay of retired officers tax exempt in the same proportion as their physical disability retirement. We feel that these officers should not be penalized for their service with us, and we have included this provision so that they may still continue to receive the tax exemption feature of their retired pay while they are continuing to serve in a civilian capacity.

In addition to that statement I would like to have the privilege of reading two paragraphs of a letter addressed to the Honorable Carl Vinson, Chairman, by General Smith, the Director, on February 20, where he stated and I quote:

"There are a few key positions in the Central Intelligence Agency which can be filled most effectively, indeed can only be filled effectively, by selected officers of the Armed Services. Although I have a quota of personnel from each of these services, I am unable to obtain for these few key positions officers of the training and experience which I require as this training and experience

is usually acquired only by rather senior officers whose numbers on the active list are limited. The obvious solution is to employ professionally and physically qualified retired officers, but the so-called dual compensation statutes make it impossible for me to obtain the services of any of those who are released for reasons other than for physical disability and physical disability would, in most cases, be a disqualifying defect from the CIA point of view. Thus, the Government is precluded from utilizing in a very important field the services of certain highly qualified individuals in whose training the United States has a very considerable investment and who are capable of performing highly important functions of particular concern to this Agency by reason of such training.

"I am faced with an immediate need for the services of certain peculiarly well-qualified retired officers, as well as some who are just reaching the retirement age. Their assistance particularly in these times would constitute a contribution of the greatest importance to our work not only in certain operational and technical fields but also in estimates of foreign and military potential."

Gentlemen, that concludes my prepared statement. I would be very glad to the best of my ability answer any questions.

Mr. Sasscer. Mr. Wickersham?

Mr. Wickersham. No questions, Mr. Chairman.

Mr. Sasscer. Mr. Anderson.

Mr. Anderson. Mr. Chairman. This has been cleared by the Bureau of the Budget.

Mr. Wolf. Yes, sir.

Mr. Anderson. Why has this prohibition existed for so many years.

Mr. Wolf. Frankly, I can't answer that.

Mr. Blandford. I think I can explain it to some extent, the prohibition on it, Mr. Anderson.

The 1894 statute of course was to prohibit an officer from holding two Federal offices. Perhaps it was part of an economy wave in 1894. But there was a tendency at that time to employ retired officers in various government agencies, although there weren't very many Government employees at that time and jobs were more or less at a premium. There was an exception made for those who were retired for disability in the 1894 statute. It has never applied to enlisted men. It has never applied to people who were elected to office or to those who were appointed by the President and confirmed by the Senate. That statute has remained in effect with some attempts to change it off and on since 1894.

In 1932, the situation was made even rougher, during the economy wave in 1932, by prohibiting any person from receiving

retired pay and the pay of his office in excess of \$3,000, unless he completely waived his retired pay. That went along with the same time when they reduced the pay of the Armed Forces by 10 percent and put many other prohibitions in effect. For example, there was no promotion from 1932 to 1933. There were no longevity increases permitted from 1932 to some part of 1933.

It was all a wave of economy.

Mr. Sasscer. That would affect enlisted personnel as well as officers.

Mr. Blandford. No, sir. The enlisted people have never been affected by the Dual Compensation laws. There are many, many retired master sergeants employed by the Federal Government, and oftentimes, it is a distinct disadvantage. We had in the Career Compensation Act, to go out of our way to prevent using language which would require a man to be retired in his officer rank. We had to make it optional so he could elect, because you might have seriously hurt a man who had served as a first lieutenant who was retired as a master sergeant and then entitled to the retired pay of a first lieutenant, because the Comptroller General will hold then that he is holding the office of a first lieutenant and would then be affected by the Dual Compensation laws. So he had to elect whether he wanted to draw the retired pay of a master sergeant or of an officer.

There has been a long history of efforts to prevent retired officers from holding Federal jobs, particularly during periods when jobs were scarce.

The 1894 Statute is really the most serious one. The Dual Compensation laws are not quite as serious as they sound in many respects, because it is possible to waive your retired pay and take the full pay of your position.

In addition, while it is not commonly known, it is quite possible to not only waive your retired pay but go to the veterans Administration and pick up from the Veterans Administration the percent of your disability and draw that in addition to the pay of your office. So a lot of the attacks in the Dual Compensation Law have not told the full story.

Now, this is an exception to the 1894 statute which was envisioned by the 1894 Statute by the use of the words "unless specially utilized by law."

They realized there would be situations even then when you wanted to get some specialists and employ them in a Government agency.

Mr. Anderson. Does this set any precedent?

Mr. Blandford. I suppose there have been a hundred precedents for exceptions made to allow people to be employed who are retired.

Mr. Anderson. Similar to the exception --

Mr. Blandford. The head of the Veterans Administration

at one time --

Mr. Pforzheimer. He has the authority in his Act to employ them for a period of five years and the Congress in the Civil Defense Act passed at the last session authorized them to employ 25 retired officers, I believe.

Mr. Blandford. Yes. I think there have been a long history of exceptions.

I would like to ask two qualifying questions, if I may, if Mr. Anderson is through.

Mr. Anderson. I am not through.

I have a couple of more questions.

Mr. Blandford. I will wait until you are through.

Mr. Anderson. I wonder if this has been called to the Comptroller General?

Mr. Pforzheimer. Yes. I talked to a member of the Comptroller General's staff, Mr. Anderson, and there is no objection from their office whatsoever. Implicit in the clearance from the Bureau of the Budget is a check with the Comptroller General's Office, and I have also talked with his legal people.

Mr. Anderson. One more question.

I don't think I quite understand this tax business.

Mr. Blandford. That is what I was about to go into, to clarify.

Mr. Anderson. You go ahead, Russ, and maybe you will clear it up for me.

Mr. Blandford. Under the Career Compensation Act, there may be two types of retirement: longevity retirement, as such, based on years of service, or disability retirement. It is also possible for an officer to have a disability of only 10 percent under the standards now existing for the Veterans Administration, but still be retired for disability under Section 402 of the Career Compensation Act. His retirement will be for disability, but he will take his retirement based upon his years of service because he may elect to compute his retired pay either on the basis of the number of years of service or upon his degree of disability, as you remember from the Career Compensation Act.

Let me use an example. A man is retired with thirty years of service and a ten percent disability. He receives 75 percent retired pay, 75 percent of the highest satisfactorily held. Because he has a ten percent disability, our law permits ten percent of his retired pay to be carried for income tax purposes tax free. If he had no disability of course he would be retired on basis of years of service and all of that would be taxable.

Now, the only person who can do that, the only people who can do that are people who have twenty or more years of service. That is an officer with 18 years of service with a 20 percent disability would not be retired. He would be severed.

You have the situation, therefore, of officer going out of the service with thirty years of service with say, a forty percent disability. Obviously, they prefer to compute their disability on the basis of their years of service because it is to their advantage to get 75 percent retired pay. But we did not want to preclude them from having the tax free feature because of the disability, because Veterans Administration compensation is tax free also and we wanted them to have some advantage.

So they are permitted to deduct 40 percent of their retired pay, or forty seventy-fifths, is actually what it amounts to, that is that portion of their retired pay as related to their degree of disability as compared with complete retirement based upon years of service.

The proviso is probably not necessary except to this extent. This makes it clear that a man retired for disability will be permitted to draw, actually draw retired pay as such, based upon that portion of his pay which he would have received had he been retired for disability and based his retirement on his degree of disability. That means this. I think I can use an illustration better than anything else.

Mr. Anderson. I wish you would.

Mr. Blandford. You are going to employ a man at the CIA at \$10,000 a year. He is now drawing \$6,000 a year retired pay. He could have drawn \$3,000 a year had he gone out based

upon his degree of disability. He went out at \$6,000 a year because he computed his retired pay based upon his years of service. Now, the CIA doesn't propose that he will draw \$6,000 from the Army and the other \$4,000 from CIA, because that would probably run right in the face of the Dual Compensation Law, to such ~~an extent~~ it would not be permitted. And in addition to that, he would still have the ~~situation~~ in which \$3,000 of that \$6,000 would be tax free.

What the CIA proposes is that the man can continue to draw \$3,000 from the Department of the Army as retired pay, based upon his degree of disability --

Mr. Anderson. And that is tax free.

Mr. Blandford. And that is tax free, and they will give him the difference between the \$3,000 and the \$10,000 which is his salary. In other words, they will pay him \$7,000.

I hope that is clear, because that is what the language provides.

Mr. Anderson. He will pay taxes on that \$7,000?

Mr. Blandford. He will pay taxes on the full \$7,000. He won't pay taxes on the \$3,000. I hope CIA has made arrangements with the Departments of the Army, Navy and Air Force to pay these people only that portion of their retired pay which would have been based upon their degree of disability, because you are going to get into a very complicated accounting system.

Mr. Anderson. I would say so.

Mr. Blandford. I assume it has been cleared with the Departments and they have no objection to it.

Mr. Pforzheimer. The Bureau of the Budget has gone over this whole thing.

Mr. Anderson. Louder, please.

Mr. Pforzheimer. The Bureau of the Budget has gone over this whole thing, and our budget people presumably have the problem well in hand, Russ.

Mr. Blandford. Have I explained definitely for the record, because I believe we are going to have Comptroller General decisions that that is your objective?

Mr. Pforzheimer. Yes.

Mr. Blandford. Because it must be made clear in the record that we are not talking about a man's complete retirement pay based upon the fact that he has been retired for disability, because, as I say, a man can be retired for disability with only a 10 percent disability, if he has had over 20 years service, and that is not the objective of this language. But it ought to be made clear for the record that what we have in mind here is that the services will pay that man only that portion of his retired pay that they would have paid him based upon the degree of his disability only and not upon his years of service. Is that clear?

Mr. Pforzheimer. That is right. That will mean, then,

Mr. Blandrod, that the fifteen will also come within the tax provisions as well as those who are retired for line of duty.

Mr. Sasscer. What do you mean by fifteen?

Mr. Blandford. The fifteen that you plan to hire.

Mr. Pforzheimer. That is right.

Mr. Blandford. If any of those people have been retired for disability but are drawing their retirement pay computed on the number of years of service.

Mr. Pforzheimer. That is right.

Mr. Anderson. I think that is about as clear as it could be made, and I suggest no further explanation, because I will become completely confused.

Mr. Blandrord. I would like to ask one additional question, Mr. Chairman --

Mr. Sasscer. Go ahead.

Mr. Blandford. -- that I think should be made.

What is your understanding of the difference, if any, between the two bills? The House bill varies in that you have a separate section for your proviso and the Senate, to remove any question that it applied to all those people, have put the proviso in with the first section.

Mr. Pforzheimer. Mr. Blandford, the change is purely a drafting change. Either way is acceptable to us. Over in the other body they felt that it was better to put the whole

business in one section, leaving the second section just to take care of the existing statutory authorities. It was just a feeling of the Committee in the other body that this would be a tighter drafting job than the original proposal. We will find nothing either way.

Mr. Sasscer. There are several questions that the Committee would like to ask in executive session on the Central Intelligence bill. So we will now go into executive session. The other bill will be taken up immediately after the conclusion of this one.

(Discussion in executive session, off the record.)

Mr. Sasscer. This will be on the record.

Mr. Blandford. Mr. Pforzheimer, as I understand this proviso, it will apply not merely to the 15 officers that you have plans to employ, but because of the use of the words "or any other authority of law," will apply to any officers who may be employed by the Central Intelligence Agency who are retired for disability and will permit them to draw that portion of their retired pay computed upon the degree of their disability and draw the remaining difference between that and the salary of their position from the CIA, is that correct?

Mr. Pforzheimer. That is correct.

Mr. Blandford. And that is the intent of the proviso?

Mr. Pforzheimer. The intent of the proviso is to allow us to give those officers who are already retired and employed by

us, retired because of disabilities and employed by us, the right to receive this percentage of relief insofar as tax purposes are concerned which the Congress gave them in the 1949 Act.

Mr. Blandford. Now, the use of the word, in lines 10 and 11, "In addition to their retired pay," means insofar as you are concerned that portion of their retired pay which is based upon the degree of their disability only?

Mr. Pforzheimer. That is correct.

Mr. Blandford. Is that correct?

Mr. Pforzheimer. That is correct.

Mr. Sasscer. Now, off the record.

(Discussion held off the record.)

Mr. Sasscer. Mr. Pforzheimer, how many persons in the CIA from the military would be embraced within this present law, as far as the statement you just made?

Mr. Pforzheimer. Well, as far as that statement is concerned, at the present time, sir, there are twelve retired officers with us who are retired for physical disability.

Mr. Blandford. And there may be a few from the 15 to be employed who may fit into this proviso?

Mr. Pforzheimer. That is correct.

Mr. Anderson. Mr. Chairman, that clears things up as far as I personally am concerned. If you don't have any further questions, I move a favorable report.

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Mr. Norblad. Could I just say one thing? Off the record --

Mr. Anderson. Why not let me complete that on the record.

Mr. Norblad. Go ahead.

Mr. Anderson. Move a favorable report to the Committee.

Mr. Sasscer. Without objection, so ordered.

Mr. Norblad. Off the record.

(Statement off the record.)

Mr. Sasscer. Thank you, gentlemen, very much.

Mr. Wolf. Thank you, sir.

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